

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

LONNIE L. BURTON,

Plaintiff,

v.

PAT GLEBE, ERIC JACKSON, KEVIN  
SHANAHAN, DAVID POE, TERA  
MCELRAVY, THOMAS L'HEUREUX,

Defendants.

No. C12-5104 RBL/KLS

**ORDER ADOPTING REPORT AND  
RECOMMENDATION**

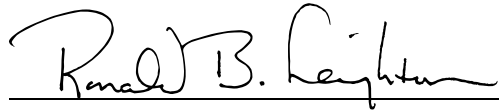
The Court, having reviewed the Report and Recommendation of Magistrate Judge Karen L. Strombom, objections to the Report and Recommendation, if any, and the remaining record, does hereby find and **ORDER:**

- (1) The Court adopts the Report and Recommendation.
- (2) Defendants' motion to dismiss (ECF No. 27) is **Granted in part and Denied in part as follows:**
  - (a) Defendants' motion to dismiss Plaintiff's retaliation claim is **GRANTED** and the retaliation claim is **dismissed without prejudice** for failure to exhaust;
  - (b) Defendants' motion to dismiss Plaintiff's Eighth Amendment claim is **GRANTED** and the Eighth Amendment claim is **dismissed with prejudice**;
  - (c) Defendants' motion to dismiss Plaintiff's due process claim and for qualified immunity is **DENIED**.

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1 (3) The Clerk is directed to send copies of this Order to Plaintiff, counsel for  
2 Defendants, and to the Hon. Karen L. Strombom.

3 **DATED** this 10<sup>th</sup> day of April, 2013.  
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7 RONALD B. LEIGHTON  
8 UNITED STATES DISTRICT JUDGE  
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